

# BLANKROME

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February 27, 2020

Hon. Ronnie Abrams, U.S.D.J.  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 2203  
New York, NY 10007

Re: ***Delacruz v. Five Below, Inc.***  
**Civil Action No.: 19-cv-10294 (RA)**

MEMO ENDORSED

USDC-SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 2/28/20

Dear Judge Abrams:

Blank Rome represents Five Below, Inc. ("Defendant") in the above-referenced matter. In accord with Your Honor's Individual Rules and Practices, we write, jointly with Plaintiff's counsel and with his consent, to respectfully request a stay of this matter pending the resolution of the motion to dismiss pending before the Court in *Henry Tucker v. Whole Foods Market Group, Inc.*, No. 19-cv-9842 (RA).

The plaintiff in *Tucker* asserts identical claims as those asserted in this case. Your Honor's decision on the defendant's motion to dismiss in that action will therefore have a significant impact on this case, as it will help clarify and possibly narrow the issues in the matter and help Defendant determine how to respond to the Complaint.<sup>1</sup> Therefore, staying this matter pending the resolution of the defendant's motion to dismiss in *Tucker* is in the interest of judicial economy and will help conserve both the parties' and the Court's time and resources. A stay was entered for similar reasons in two other cases pending before this Court which assert identical claims, *Calcano v. Domino's Pizza*, No. 19-cv-9823 (see Docket Entry No. 24, in which the Hon. Gregory H. Woods entered an Order providing, among other things, that "this case is stayed to permit the resolution

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<sup>1</sup> Defendant notes that motions to dismiss have also been filed by the defendants in at least two other cases pending before your Honor which also assert identical claims as those asserted in this case, *Braulio Thorne v. Boston Market Corporation*, No. 19-cv-9932 (RA) and *Marcos Calcano v. LuLuLemon USA Inc.*, No. 19-cv-10430 (RA). However, unlike the motion to dismiss filed in the *Tucker* case, the motions to dismiss in these two other cases have not yet been fully briefed by the parties. Nevertheless, Your Honor's ruling on those motions will also have a significant impact on the parties' claims and defenses, and how the Defendant will respond to the Complaint, in this case.

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of motions to dismiss in similar matters currently pending before the Court and elsewhere in this District” and staying the case until July 21, 2020), and *Delacruz v. Jamba Juice Company*, No. 19-cv-10321 (same order in another case pending before Judge Woods, *see* D.E. 20).

The parties further propose that Defendant will file its response to the Complaint within fourteen (14) days of the Court’s order on Whole Foods’ motion to dismiss, and that the Initial Conference in the case will be scheduled within thirty (30) days of such ruling.

In the alternative, if the Court is not inclined to stay this matter, Defendant writes to request a thirty (30) day extension of time from the Court’s determination of this letter motion to answer, move, or otherwise respond to the Complaint. Defendant’s response to the Complaint is currently due on March 2, 2020. This is the third request for an extension of time, and the Court has granted the parties’ first two requests. The parties further request the initial conference, currently scheduled for March 20, 2020, be adjourned thirty (30) days from the date Defendant must file a response to the Complaint. Plaintiff consents to these proposed extensions, and the requested extensions will not prejudice any party to this action.

Accordingly, the parties respectfully request that this matter be stayed pending the Court’s determination of the motion to dismiss filed by the defendant in the *Tucker v. Whole Foods* action or, in the alternative, that Defendant be granted a thirty (30) day extension of time to answer, move, or otherwise respond to the Complaint.

We appreciate Your Honor’s consideration of this request, and thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Anthony A. Mingione

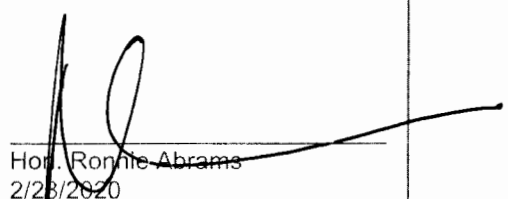
Anthony A. Mingione

cc: All Counsel of Record

Application granted. This action is stayed pending the resolution of the motion to dismiss in *Tucker v. Whole Foods Market Group, Inc.*, No. 19-cv-9842. Defendant shall respond to the Complaint within 14 days of the Court’s decision on the motion to dismiss in *Tucker*.

The initial conference scheduled for March 20, 2020 is hereby adjourned *sine die*.

SO ORDERED.

  
Hon. Ronnie Abrams  
2/28/2020